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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.
25 Plaintiff,
26 v.
27 GOOGLE INC.
28 Defendant.

Case No. CV 10-03561 WHA

**DECL. OF GABRIEL M. RAMSEY IN
SUPPORT OF ORACLE'S OPPOSITION TO
GOOGLE'S MOTION TO STRIKE PORTIONS
OF ORACLE'S EXPERT REPORTS**

Hearing: February 2, 2016, 11:00 a.m.
Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

RAMSEY DECL. IN OPP. TO GOOGLE'S
MOTION TO STRIKE PORTIONS OF
ORACLE'S EXPERT REPORTS

1 I, Gabriel M. Ramsey, declare and state as follows:

2 1. I am a member of the bar of the State of California, admitted to practice before this
3 Court, and I am a partner with the law firm of Orrick, Herrington & Sutcliffe LLP (“Orrick”),
4 attorneys of record for Plaintiff Oracle America, Inc., (“Oracle”). I am familiar with the events,
5 pleadings and discovery in this action and, if called as a witness, I could and would testify
6 competently to the matters stated herein of my own personal knowledge.

7 2. I submit this declaration in support of Oracle’s Opposition to Google’s Motion to
8 Strike Portions of Oracle’s Expert Reports.

9 3. When this action was remanded from the Federal Circuit, the operative complaint
10 was Oracle’s Amended Complaint, filed October 27, 2010. ECF 36. In order to bring Oracle’s
11 allegations up to date, Oracle sought leave to file a supplemental complaint. *See* ECF 1287. The
12 Supplemental Complaint was filed on August 12, 2015. ECF 1292. The Supplemental
13 Complaint stated a prima facie claim of copyright infringement against six new versions of
14 Android released after October 27, 2010: Gingerbread (released Dec. 2010), Honeycomb (Feb.
15 2011), Ice Cream Sandwich (Oct. 2011), Jelly Bean (July 2012), KitKat (Oct. 2013) and Lollipop
16 (Nov. 2014). *See* ECF 1292 ¶ 1. Oracle alleged that these six versions of Android infringed
17 Oracle’s copyrights in the Java platform without identifying a specific copyright. *Id.* At the time
18 Oracle filed the Supplemental Complaint, neither Oracle nor its counsel were aware that Google
19 had copied into the new Android versions additional copyrighted elements of the Java platform
20 beyond those elements of Java SE 1.4 and Java SE 5 at issue in the first trial.

21 4. Just prior to the filing of the Supplemental Complaint, the Court held a case
22 management conference on July 30, 2015. At the case management conference, the proposed
23 supplemental complaint was discussed in the context of whether or not Oracle intended to elect
24 statutory damages under the Copyright Act for purposes of willfulness. *See* July 30, 2015 Hr. Tr.
25 8:18–20:7. Google’s counsel pointed out that Oracle’s proposed supplemental complaint did not
26 repeat a demand for statutory damages, and Oracle agreed, explaining 1) “that would be
27 duplicative of the original Complaint” and 2) “[n]o new work is identified in the proposed
28 Supplemental Complaint.” *Id.* at 17:12–14. At the time, Oracle was not aware that Google had

1 increased its copying in Android versions released after August 2010 (Gingerbread–Lollipop) to
2 include elements of the Java platform unique to Java SE versions 6 and 7.

3 5. Oracle never represented to Google or the Court that the Supplemental Complaint
4 was limited to copying of Java SE 1.4 or 5. If Google had asked Oracle if the Supplemental
5 Complaint was so limited, Oracle would have responded that the prima facie claim in the
6 Supplemental Complaint included all of Oracle’s copyrights in the Java platform without regard
7 to version. When Google asked Oracle about the scope of the Supplemental Complaint on
8 November 18, 2015, Oracle responded: “For purposes of the prima facie case laid out in the
9 Supplemental Complaint, copyright infringement is all copying without authorization of any
10 portion of the Java SE platform owned by Oracle, or which Oracle otherwise has a right to
11 enforce, from the release of Gingerbread and forward.” Kamber Decl. Ex. 2 at 2.

12 6. When discovery reopened after this case was remanded from the Federal Circuit,
13 Oracle attempted to reach a stipulation with Google regarding the infringement claims against the
14 new versions of Android contained in the Supplemental Complaint. Google stated by email on
15 October 4, 2015 that it was only willing to stipulate to infringement of those portions of the
16 structure, sequence and organization (“SSO”) already copied from Java in the Froyo release of
17 Android, excluding verbatim copying of declaring code that had also appeared in Froyo. As this
18 was unacceptable to Oracle and it appeared that a stipulation would not be possible, Oracle began
19 its own code analysis to determine exactly what Google had copied into Android versions
20 released after October 2010. Attached hereto as Exhibit 1 is a true and correct copy of
21 correspondence between Oracle and Google related to the infringement stipulation, dated
22 September 2, 2015 through October 4, 2015.

23 7. Attached hereto as Exhibit 2 is a true and correct copy of excerpts of the Expert
24 Report of Professor Douglas C. Schmidt, Ph.D., dated January 8, 2016, and provided to Google
25 on that same date. Exhibit 2 does not contain Appendices K through M of the report.

26 8. Attached hereto as Exhibit 3 is a true and correct copy of the Declaration of Mark
27 Reinhold, executed on January 7, 2016 in Menlo Park, California. This declaration is relied on by
28 the Schmidt Report and was provided to Google as part of Dr. Schmidt’s reliance materials.

1 Exhibit 3 does not contain the exhibits to the declaration.

2 9. Attached hereto as Exhibit 4 is a true and correct copy of the Expert Report of
3 Chris F. Kemerer, Ph.D., dated January 8, 2016, and provided to Google on that same date.

4 10. Attached hereto as Exhibit 5 is a true and correct copy of the Expert Report of
5 Robert Zeidman, dated January 8, 2016, and provided to Google on that same date.

6 11. Attached hereto as Exhibit 6 is a true and correct copy of the Certificate of
7 Registration for Oracle's copyright in Java Standard Edition 7, dated November 4, 2015, and
8 produced in this litigation, marked as OAGOOGL3000000504–OAGOOGL3000000511.

9 12. Attached hereto as Exhibit 7 is a true and correct copy of the Certificate of
10 Registration for Oracle's copyright in Java Standard Edition 6, dated May 20, 2008, admitted as
11 TX 659 during the first trial.

12 13. Attached hereto as Exhibit 8 is a true and correct copy of the Certificate of
13 Registration for Oracle's copyright in Java 2 Standard Edition 1.4, dated April 20, 2005, admitted
14 as TX 464 during the first trial.

15 14. Attached hereto as Exhibit 9 is a true and correct copy of the Certificate of
16 Registration for Oracle's copyright in Java Standard Edition 5.0, dated December 20, 2004,
17 admitted as TX 475 during the first trial.

18 15. Attached hereto as Exhibit 10 is a true and correct copy of excerpts of Plaintiff's
19 Interrogatories to Google Inc., Set Five, served on Google on August 21, 2015.

20 16. Attached hereto as Exhibit 11 is a true and correct copy of excerpts of Defendant
21 Google Inc.'s Responses and Objections to Plaintiff's Interrogatories, Set Five, served on Oracle
22 on September 21, 2015.

23 17. Attached hereto as Exhibit 12 is a true and correct copy of excerpts of Oracle's
24 Supplemental Responses to Google's Sixth Set of Interrogatories, served on Google on November
25 12, 2015.

26 18. Attached hereto as Exhibit 13 is a true and correct copy of excerpts of Defendant
27 Google Inc.'s Second Supplemental Responses and Objections to Plaintiff's Interrogatories, Set 5
28 (Nos. 26–37), served on Oracle on November 12, 2015.

20. Attached hereto as Exhibit 15 is a true and correct copy of excerpts of Defendant Google Inc.'s Eighth Set of Interrogatories to Plaintiff Oracle America, Inc. (No. 38), served on Oracle on November 16, 2015.

22. I declare under penalty of perjury under the laws of the United States that the foregoing is true.

Executed this 1st day of February, 2016, at San Francisco, CA.

Gabriel M. Ramsey